

Page 82

1 Q. And No. 9?
2 **A. Not this way.**
3 Q. Okay. And when you say "not this way," what
4 are you concerned about?
5 **A. It should be -- you can prepare it, but it**
6 **should really be presented in a meeting that involves**
7 **all of the trades that are actively doing work on the**
8 **project at that time, and that your submission gets**
9 **merged with other people's and discussions, so that we**
10 **can come up with a final one that considers all the**
11 **activities rather than just your activity. It's very**
12 **difficult for you to do anything effective if you're**
13 **sitting in a room by yourself and saying "This is what**
14 **I want."**
15 Q. I want to move on to page 4036. It's the same
16 exhibit. This is under "General conditions." It's a
17 rider A to the bid package. Want to direct your
18 attention to No. 11, where it says, "It may be
19 necessary for this Contractor to leave openings in its
20 work or omit portions of work temporarily in order
21 that other trades can perform their work. It is
22 understood that the work of filling in openings or
23 completing such unfinished portions of the work may be
24 required to be performed at different times and

Page 84

1 **A. That's a good question, because the project**
2 **wasn't sequenced in a manner that I would have**
3 **considered reasonable at bid time. I think, I think**
4 **that's responsive to your question.**
5 Q. As it was sequenced in actuality, and this is,
6 I think you just said as you saw it as being sequenced
7 at bid time, in the way it actually proceeded, would
8 that have been -- was that more reasonable in your
9 opinion than the way it was presented at bid time?
10 **A. No. It was, it was, it was entirely**
11 **unreasonable and unexpected, the manner in which the,**
12 **the project actually unfolded.**
13 Q. I guess what I'm trying to get at is I think
14 you testified that as it was presented at bid time,
15 that you thought that there were problems with the
16 sequence at that time too.
17 **A. I don't remember --**
18 MR. McDONALD: Maybe we can have it read
19 back, I think a couple, maybe a couple of questions
20 back.
21 (The requested portion was read.)
22 Q. That's what I'm trying to get at in your prior
23 response when you said you didn't consider it
24 reasonable at bid time, I'm trying to see if I can

Page 83

1 intervals including those after the Contractor
2 has completed its primary work. All of the foregoing
3 shall be included in the Contract Price." Do you
4 consider that provision to be a reasonable
5 expectation?
6 **A. If it's coordinated, if it's organized, and if**
7 **there's sufficient notice provided to the contractors**
8 **that it affects, it would be a reasonable provision.**
9 Q. And what would be sufficient notice, in your
10 opinion?
11 **A. It depends on what activities are taking place**
12 **and what the sequence is. If we start at one corner**
13 **of the building and we work out from there so that**
14 **everybody can see what's coming days and weeks ahead,**
15 **less notice is necessary. If we're working here and**
16 **unexpectedly two weeks later we're working in this**
17 **area, and then a day later we're working in that area**
18 **where no one can anticipate anything because the job**
19 **isn't moving along in a normal sequence, then this**
20 **becomes very difficult to do to diminish the**
21 **inefficiency and the delay.**
22 Q. Regarding this particular project, 2357, what's
23 your understanding as to the reasons for the
24 sequencing of the work?

Page 85

1 understand if there's a distinction between the
2 sequencing at bid time, if you consider that to be
3 unreasonable versus the way it actually progressed
4 once the project started.
5 **A. Well, I think what I just heard the court**
6 **reporter read was basically what unfolded was**
7 **different than what was anticipated at bid time.**
8 **That's, that was my understanding of what was just**
9 **read.**
10 Q. Okay, I --
11 MR. SEGLIAS: Well, it was your answer
12 that she read back.
13 THE WITNESS: Yes.
14 MR. SEGLIAS: Okay, so in response to what
15 Paul is asking --
16 THE WITNESS: Yes.
17 MR. SEGLIAS: -- did you consider -- I
18 don't want to ask the deposition questions here. But
19 did you consider what happened at bid time reasonable
20 and then contrast that to what happened later? What
21 was reflected at bid?
22 THE WITNESS: What Creedon had anticipated
23 at bid time based upon the documents I considered to
24 be reasonable.

Creedon Controls, Inc.
Dennis Linkv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
May 31, 2006

1 shall include, in addition to other terms and
 2 conditions, customary representations, warranties,
 3 bonding, indemnities, and insurance from Subcontract
 4 Agreement executed, Subcontractor agrees to be bound
 5 to the terms and conditions of the Subcontract
 6 Agreement as attached hereto as Exhibit 1." Do you
 7 see that?

A. I see that.

9 Q. Is it a fair interpretation of that paragraph
 10 that, in your opinion, that the subcontract agreement
 11 that is attached will be included in any future
 12 contractual arrangement?

13 MR. SEGLIAS: I'm going to object to the
 14 question, because I think it calls for a legal
 15 conclusion. I don't think also that there is a
 16 foundation to ask this witness that question. It
 17 almost sounds as though you're asking his opinion.
 18 He's here as a fact witness, and therefore, I don't
 19 think that it's appropriate for him to speculate about
 20 what he thinks it means. I don't know if it's even
 21 worth anything, but I know you've asked the question.

22 So if you want to rephrase that, Paul, or,
 23 you know, start with a foundation whether he discussed
 24 it with anybody, I don't have a problem with that.

Page 106

Page 108

A. That is correct.

2 Q. Okay. And as part of that legal experience
 3 that you indicate on your curriculum vitae, have you
 4 looked at documents similar to this, to this, what is
 5 now Link C, contractual documents?

A. Yes.

7 Q. Okay. And have you been asked to provide your
 8 opinion of what they mean in terms of in the
 9 construction industry or in particular to electric
 10 contracting?

A. Specifically to this project or in general?

12 Q. In general, have you been asked before to do
 13 that?

A. Yes.

15 Q. Okay. And how many times have you done that
 16 before, if you, if you know?

A. Frequently.

18 Q. Frequently, okay. So -- okay. Well --

19 MR. SEGLIAS: I still, same objection.

20 MR. McDONALD: Same objection.

21 MR. SEGLIAS: He is not a lawyer.

22 MR. McDONALD: Right.

23 MR. SEGLIAS: Even though he may have had
 24 that experience.

Page 107

Page 109

1 But otherwise, I think it's not an appropriate
 2 question for this witness.

3 Q. Okay. You're familiar with your curriculum
 4 vitae; is that correct?

A. My curriculum --

6 Q. Yes, because you prepared it, right?

A. I think so, yes.

8 Q. And are you familiar on your curriculum vitae
 9 it's listed, and I'm sorry I don't have an additional
 10 copy here, I don't think I do, but you just indicated
 11 that you're familiar with it, that there is a mention
 12 of -- here is actually an additional copy, Counsel, if
 13 you want to take a look at it. I'm sorry, I don't
 14 know if I have an additional for you.

15 There's indicated there, Mr. Link's legal
 16 experience, 1977 to present. It says, "Covers many
 17 aspects of the litigation process, having many years
 18 of experience with settlement negotiations and
 19 litigation in construction. He has participated in
 20 many cases as a (i) a litigation and alternate dispute
 21 resolution support consultant, (ii) an expert witness
 22 and (iii) a sole arbitrator and as part of an
 23 arbitration panel for the American Arbitration
 24 Association." That's correct, right?

1 MR. McDONALD: Understood, understood.

2 MR. SEGLIAS: And with regard to the
 3 interpretation of this particular language, what he
 4 may have done in the past with regard to other
 5 documents or other letters of intent I don't think
 6 have any relevance to what the words here mean. That
 7 really is appropriately directed either to
 8 Mr. Angerame, who authored the letter, or Miss
 9 Creedon, who, who also signed the document.

10 Q. Well, let me ask you this. Reading that
 11 paragraph, what would your interpretation be of that
 12 paragraph if you were presented with it?

13 **A. I think that the fact that the prime contract
 14 document has not been finalized says that everything
 15 is up in the air. And we can't rely upon anything
 16 because any subcontract would have to be conditioned
 17 upon whatever is in the prime contract document. So
 18 that there's nothing here that you can rely upon until
 19 the prime contract documents are completed and the,
 20 the, someone such as Forest Electric, for example,
 21 knows the terms and conditions which they have to
 22 introduce into their, their blank contract document,
 23 what changes they have to make and, and usually in
 24 those contracts they make reference to the prime**

28 (Pages 106 to 109)

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Creedon Controls, Inc.
Dennis Linkv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
May 31, 2006

1 contract, which you really need to know what the terms
2 and conditions are overall for your participation in
3 the project.

4 It's pretty well -- as far as I'm
5 concerned, that paragraph means it's open-ended.

6 Q. And in regards to the part of that paragraph
7 that says that it shall include, what do you, what do
8 you understand the "shall include" to be referencing?

9 A. I'm sorry, you have to -- can you give me a
10 line number?

11 Q. Sure, it's the third line in the second
12 paragraph.

13 A. "Which shall include." Okay.

14 Q. Right. What do you understand that to be
15 referring to?

16 A. They're just general issues that are present in
17 every contract, and they're just generally throwing
18 these things out and saying the kinds of things you
19 normally see in a contract are going to be present in
20 this contract when it gets finalized.

21 Q. Okay. And at the end of that, of that list --
22 that's, you're referring to the terms and conditions,
23 customary representations, warranties, bonding,
24 indemnities and insurance from subcontract agreement.

Page 110

Page 112

1 Exhibit 1 referred to in paragraph 2 on the first
2 page, CL 1143?

3 A. Yes, that would be my, my opinion.

4 Q. Okay. Now, at the bottom of that first page,
5 1143, Patricia Creedon, there is a Patricia Creedon
6 signature there; is that correct?

7 A. There are two signatures at the bottom of that
8 form.

9 Q. Okay.

10 A. One includes Patricia Creedon.

11 Q. Okay. And above that there is a portion that
12 says, "This letter of intent is accepted and will be
13 considered executed after the required substantive
14 review, modification, negotiations and implementation
15 of the advice from Creedon Control Incorporated's
16 legal counsel, allowing 14 days for response to
17 address terms, conditions, scope of work and any and
18 all other items requiring additional considerations."

19 Do you see that?

20 A. Yes, I do.

21 Q. Okay. And is it your understanding that that
22 additional language was added, added by Miss Creedon?

23 A. It's below the original letter and Paul

24 Angerame's signature, so that would be my assumption.

Page 111

Page 113

1 That's what you're referring to?

2 A. All of those issues, yes.

3 Q. Okay. And at the end of that particular
4 section, doesn't it also say, "Subcontractor agrees to
5 be bound to the terms and conditions of the
6 subcontract agreement as attached hereto as Exhibit
7 1"?

8 A. Yeah, it's saying that, you know, at some point
9 in time when we can finalize that based upon us having
10 a prime contract document. You know, you have to
11 expect to be bound by that. And largely, it's, I
12 think it's referring to the prime contract document
13 and what the conditions and all of these other things
14 that are surrounding that, you know, will happen to
15 impose upon the subcontractor.

16 But in itself, I don't think it -- I think
17 it's open-ended, as I said earlier.

18 Q. There is an Exhibit 1 attached to that
19 document, though, isn't that correct?

20 A. I don't know. Should I --

21 Q. If you'd turn to the next page, CL 1144.

22 A. There is a subcontract agreement, a document
23 identified as a subcontract agreement attached.

24 Q. And is it your understanding that that's the

1 Q. Okay. And to your knowledge, did Miss Creedon
2 or anyone from Creedon Controls in any way respond or
3 object to the content of this October 2nd, 2003 letter
4 within 14 days?

5 A. Well, the current date is May of 2006. I have
6 yet to see a complete set of documents that anyone can
7 review with respect to this contract. They never
8 delivered them, so I don't know how anything can be
9 done in 14 days to review documents that don't exist.

10 Q. Okay. But this particular, I won't say
11 proviso, but this particular I think she referred to
12 it as a codicil before, saying this is the letter of
13 intent is accepted, is that not just related to this
14 particular information?

15 MR. SEGLIAS: I'm going to object to the
16 extent that you're, you're asking him to speculate
17 again, because that's -- Miss Creedon answered
18 questions about this. And so the only thing that
19 Mr. Link could testify to is either a conversation
20 that he had with her about this particular
21 understanding, or if he was provided some other
22 information about what this meant from some
23 independent basis.

24 MR. McDONALD: Understood.

29 (Pages 110 to 113)

Creedon Controls, Inc.
Dennis Linkv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
May 31, 2006

1 BY MR. McDONALD:

2 Q. Have you seen any, any documentation or
3 correspondence from Creedon to Forest Electric
4 referencing this particular document that occurred
5 within 14 days of the date of this document?

6 **A. I, I don't recall seeing any.**

7 Q. Now, turning to what is I think the attachment
8 Exhibit 1 to this document starting at page --

9 **A. Excuse me, Paul.**

10 Q. Yes.

11 **A. Let me, let me go back to that again.**

12 Q. Okay.

13 **A. While you were planning your next question.**

14 **Yeah, there was documentation that I do recall seeing**
relative to this original agreement.

15 Q. Okay.

16 **A. And I think it was related to where is it, when**
are we going to get it, something of that sort. But
I -- that's just a vague recollection.

17 Q. Okay. And do you recall when that, that
18 documentation?

19 **A. I would have seen it sometime subsequent to my**
arrival on the project in March, April.

20 Q. Okay.

Page 114

1 **A. Okay, Roman numeral I?**

2 Q. Right, Roman numeral I, that's a better way of
3 putting it. Towards the end of that paragraph there's
4 a section that starts off, it's five sentences down,
5 "Subcontractor agrees to be bound and obligated to FEC
6 as FEC is bound and obligated to Construction Manager
7 and/or Owner under its Contract as to the Work
8 provided hereunder." Do you see that?

9 **A. Yes.**

10 Q. What's your, what's your understanding of that
11 clause?

12 **A. Well, I think that in my earlier testimony I**
referred to the prime construction contract. And I
think it's, it's related to that prime construction
contract.

13 Q. But in terms of, in your experience, you
14 testified that you've had some experience interpreting
15 contracts, have you seen something like this before?

16 **A. That the subcontract agreement is, is subject**
to terms and conditions that might exist in a prime
contract?

17 Q. Yes.

18 **A. Is that what you're referring to?**

19 Q. Right.

Page 116

1 **A. So I really can't tell you at this point when**
these documents were generated.

2 Q. Understood. Appreciate that.

3 Looking at CL 1144, it's the first page of
4 the subcontract agreement that's attached as Exhibit
5 1. I want to direct your attention -- well, first of
6 all, there seems to be handwriting on this document.
7 Do you recognize that handwriting at all?

8 **A. It looks very similar to the handwriting that I**
see, Pat Creedon's signature and also her printing
below, so I would suspect it's Pat Creedon's, but I,
I'm just guessing based upon what I'm seeing on the,
on 1143.

9 Q. Have you had a conversation with Miss Creedon
10 as to whether or not that's her handwriting on this
11 particular document?

12 **A. I think, I think I have had such a**
conversation. My, my guess is that it is her
handwriting.

13 Q. And now looking at -- we'll finish up with this
14 document and then we'll call a break for lunch.

15 Looking at, I want to call it I guess I, I guess
16 paragraph I which starts off "Subcontractor
17 represents." Do you see that?

Page 115

1 **A. Yes, I have.**

2 Q. And is this -- does this clause mean that the
3 subcontractor is contracting with, in this case, FEC?

4 **A. Yes.**

5 Q. And FEC has a separate contract with, with
6 another entity that does not involve a subcontractor?

7 **A. If I were to see this set of documents and not**
know what I know about the project, I would say that
it looks like there's a subcontract agreement
anticipated between Creedon Controls and Forest
Electric Corporation.

8 Q. Okay, you say not what you know about the
9 project, what is it that you know about the project
10 that would cause you not to believe that to be the
11 case?

12 **A. Because in May a 60-page contract was issued by**
Banc One that was dated as to the beginning of the
project back in October of '03, which suggests to me
that Banc One, for some reason, wanted the terms and
conditions of their contract to be binding upon the
subcontractor on a prime contract basis.

13 Q. Okay, and we'll get to that. It's, obviously
14 it will be after lunch at this point. But I want to
15 ask a couple of quick questions about that first.

Page 117

30 (Pages 114 to 117)

1 **A. That is correct.**
2 Q. Okay.
3 **A. Well, the first document is the, I think would**
4 **be -- yes, I mean it would be appropriate to say Paul**
5 **Angerame.**
6 Q. Right. Now, if you look at Link R, the May 4,
7 2004 document, the single project construction
8 services agreement, if you look on page 6114, it's the
9 first page, it identifies as a construction contractor
10 Creedon Controls Incorporated. Is that correct?
11 **A. Yes.**
12 Q. And identifies as the electrical trade manager
13 Forest Electric Corporation; is that correct?
14 **A. Yes.**
15 Q. And the first sentence of the document says,
16 "This Single Project Construction Services Agreement
17 is made as of the 2nd day of October 2003." And we
18 understand that's backdated. Is that a fair
19 statement?
20 **A. We're reading the bottom now?**
21 Q. Yes, I'm sorry, the first sentence at the
22 bottom, "This Single Project Construction Services
23 Agreement is made as of the 2nd day of October 2003."
24 And again, that's backdated?

Page 194

1 **A. Yes, given this is May, then that would be**
2 **backdated.**
3 Q. Okay, and it says, "(Agreement) between
4 Electrical Trade Manager," that's Forest Electric,
5 correct?
6 **A. Um-hum.**
7 Q. "And Construction Contractor," and that's
8 Creedon Controls, correct?
9 **A. That is correct.**
10 Q. Now, on Link S, the proposed revisions to Link
11 R, that document, if you look on page FE 003547. Let
12 me know when you're there.
13 **A. Yes.**
14 Q. Item No. 1, it says, "Contract location. First
15 page, last paragraph, first sentence." Proposed
16 change is between, to change "between Electrical Trade
17 Manager and Construction Contractor," to read "between
18 Banc One Building Corporation, Electrical Trade
19 Manager, Agent, and Construction Contractor." Do you
20 see that?
21 **A. Yes, I do.**
22 Q. Okay. Who, who was the person that proposed
23 that change, you or Miss Creedon or Mr. Doble?
24 **A. I did.**

Page 195

1 Q. Okay. And why did you propose that change?
2 **A. Because on page 3, 006116, it's clearly**
3 **identifying the signator as exactly what, all we did**
4 **was create consistency between what they wanted, who**
5 **they wanted to sign it and in what role they wanted it**
6 **signed, and what was previously presented.**
7 Q. And what are you referring to in particular on
8 006116?
9 **A. "Owner: Banc One Building Corporation, an**
10 **Illinois corporation, By: Forest Electric Corp. as**
11 **Banc One Building Corporation's agent and Electrical**
12 **Trade Manager, by," whoever the respective party would**
13 **have been.**
14 Q. And did you know who Philip Altheim was?
15 **A. Yes.**
16 Q. Okay, and who did -- who was Philip Altheim?
17 **A. Well, I knew him as one of the people on the**
18 **project. I'm not sure who he worked for.**
19 Q. Okay. And did anyone at Banc One Building
20 Corporation tell you that Forest Electric Corporation,
21 you or anyone at Creedon to your knowledge, that
22 Forest Electric Corporation was their agent?
23 **A. Only to the degree that -- the answer to your**
24 **question is no, no one from Banc One came to me and**

Page 196

1 **said that Forest Electric was the agent.**
2 Q. Is this particular, the section you just read
3 off on page 006116, is that the only written example
4 where you, that you point to indicating your --
5 supporting your belief that Forest Electric
6 Corporation was acting as an agent for Banc One
7 Building?
8 **A. I can't say that. I would have to review the**
9 **documents that surrounded this and, you know, the**
10 **documents that were exchanged at this time. But as I**
11 **answered previously, clearly it's being asked that**
12 **this -- I just noticed this as we were discussing it.**
13 **Clearly it's indicated here that Forest is the agent,**
14 **and there was a disagreement between what you**
15 **originally read and the manner in which the document**
16 **is supposed to be executed.**
17 Q. Now, is it fair to say that, we've talked about
18 this earlier today, you've made reference to Banc One
19 and agency, when you make that reference, is this the
20 specific item that you are thinking of when you made
21 that statement earlier?
22 **A. Not alone. This was one of the things -- I was**
23 **thinking about this document, not specifically that**
24 **particular section of it. But there were discussions**

Page 197

Creedon Controls, Inc.
Dennis Linkv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
May 31, 2006

Page 202

1 **A. Yes.**
 2 Q. When it talks about, "The foregoing shall not
 3 relieve Construction Contractor of Construction
 4 Contractor's responsibility to advise Owner of any
 5 inconsistencies in any of the plans and specifications
 6 which a fully competent first class contractor could
 7 reasonably be expected to discover upon review of the
 8 plans and specifications." Do you see that?
 9 **A. Yes.**
 10 Q. Now, in fact, to the extent that Creedon
 11 recognized or reported any such inconsistencies, it
 12 reported them to Forest Electric, not Banc One
 13 Building Corporation. Isn't that correct?
 14 **A. Yes, I think fundamentally Creedon's contact on**
this project was primarily with Forest and sometimes
with Tishman.
 17 Q. Now given that answer, maybe I can skip forward
 18 a bit. And that would be true of -- withdrawn.
 19 MR. BRADLEY: Pardon me, what was the last
 20 question?
 21 (The requested portion was read.)
 22 BY MR. McDONALD:
 23 Q. Okay, I want to go to, we're still in Link R,
 24 the document that was presented to Creedon. I want to

1 Q. Here, right there.
 2 **A. "To the extent required"?**
 3 Q. Right, I was going to start off at the end of
 4 the sentence, but I'll just do the whole thing.
 5 **A. Thank you.**
 6 Q. "To the extent required by Construction
 7 Contractor to perform the Work, Owner shall furnish
 8 descriptions of all surveys describing the physical
 9 characteristics, legal limitations and utility
 10 locations for the area within which the Work is to be
 11 performed and where materials are to be stored, which
 12 Work areas within the Site are limited to the areas
 13 designated such on Exhibit D to the Agreement (Work
 14 Area)."
 15 My question is, in fact, is it true to say
 16 that when Creedon communicated regarding, or the
 17 communication it received regarding descriptions and
 18 surveys on this project that it received them from
 19 Forest and not from Banc One Building Corporation?
 20 **A. I can't say that I was privy to the exchange of**
such information. It probably occurred early in the
project, so I really can't answer that question.
 23 Q. Okay, if we go to No. 2.03, first sentence
 24 says, "If Construction Contractor is in default of any

Page 203

1 go now to page 006133 to Article 2 entitled "Owner."
 2 Let me know when you're there.
 3 **A. Yes, I'm sorry.**
 4 Q. Now, in that particular article, I want to talk
 5 about 2.01, the first one. If you go to the end of
 6 the first sentence, it says, "Owner shall furnish
 7 descriptions of all surveys describing the physical
 8 characteristics, legal limitations and utility
 9 locations for the area within which" --
 10 **A. Excuse me, I'm going to interrupt you. I can't**
find where that is.
 12 Q. 2.01 under Article 2.
 13 **A. Yes, yes.**
 14 Q. At the end of the very first sentence.
 15 **A. Oh, at the end of the first sentence.**
 16 Q. Right, I'm sorry. Right after the, I guess the
 17 introductory clause, if you will. "To the extent
 18 required by Construction Contractor to perform the
 19 Work, Owner shall furnish descriptions of all surveys
 20 describing the physical characteristics" --
 21 **A. I'm sorry, I still don't know where you are.**
 22 **Could you just point to it on your document?**
 23 Q. I will, it's 2.01.
 24 **A. Just point on your document.**

Page 205

1 of its obligations under the Contract Documents, and
 2 such failure or default continues for seven days after
 3 written notice from Owner, Owner may order
 4 Construction Contractor immediately to stop the Work,
 5 or any portion thereof, until the cause for such order
 6 has been eliminated." Do you see that?
 7 **A. Yes.**
 8 Q. In fact, when -- in fact, Creedon communicated
 9 with Forest and not Banc One Building Corporation when
 10 it received noncompliance notices that either came
 11 from or were made by Forest. Isn't that true?
 12 **A. To answer that question, my understanding of an**
agency arrangement is I'm dealing with the owner when
I'm dealing with the owner's agent. So I -- you know,
when you say we're dealing with Forest, who is the
agent of the owner, as far as I'm concerned we're
dealing with the owner.
 18 Q. But I guess so then, your understanding is that
 19 communications went through either Forest or Tishman,
 20 and that based upon what you believe to be the case,
 21 they were then agents of Banc One Building. Is that
 22 what you're saying?
 23 **A. Well certainly with respect to this agreement,**
 24 **it was clear to me, either correctly or incorrectly,**

52 (Pages 202 to 205)

Creedon Controls, Inc.
Dennis Linkv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
May 31, 2006

Page 206
 1 **that the, that Banc One was represented by Forest as**
 2 **agent. And when we were dealing with Banc One, if**
 3 **this particular agreement is the agreement that**
 4 **controls, then we were dealing with Banc One, the**
 5 **owner, if we were dealing with Forest.**

6 Q. But again, you didn't deal with anyone from
 7 Banc One Building Corporation to your knowledge
 8 regarding any of the issues we just discussed in the
 9 contract?

10 **A. Again, I wasn't privy to all of those contacts,**
 11 **but I did -- I don't recall the issue, other than**
 12 **those which I testified to this morning, that involved**
 13 **Banc One employees or -- employees.**

14 Q. Understood.

15 MR. McDONALD: We can take a break since
 16 we have I think five minutes left on this tape.

17 THE VIDEOGRAPHER: We're going off the
 18 record at approximately 3:37 p.m.

19 (A brief recess was taken.)

20 THE VIDEOGRAPHER: We're going back on the
 21 record at approximately 3:42 p.m.

22 BY MR. McDONALD:

23 Q. Now, I want to go to, and still might be best
 24 if you kept R and S kind of off to the side because

Page 207
 1 we're probably going to go back to them a couple of
 2 times and it might be easier to flip that way. But in
 3 the notebook I want to go to, excuse me, to Link T,
 4 which is funny considering our conversation about tee
 5 off records a second ago.

6 (Link Exhibit No. T was marked for
 7 identification.)

8 Q. Link T on its face appears to be a July 23rd,
 9 2004 letter from Miss Creedon addressed to CEO of Banc
 10 One Building Corporation and CEO of Tishman
 11 Construction Corporation and the CEO of Forest
 12 Electric Corporation, Philip Altheim, so I guess that
 13 tells us who he is from a prior document when we
 14 discussed it.

15 My first question is, to your knowledge is
 16 this the first, the first correspondence or
 17 communication that Creedon Controls had directly with
 18 Banc One Building Corporation on the matter of the
 19 critical events summary that we discussed earlier, the
 20 order of magnitude?

21 **A. I can't say that this is one of the original**
 22 **documents, but I don't know. There were several of**
 23 **these that I, that I recall that were sent. And I**
 24 **don't know, you know, I don't have the time line in**

Page 208
 1 **front of me.**
 2 Q. Okay. Actually, what might be helpful is I
 3 think there is a time line inside the document itself
 4 if we turn the next page, 005734. Miss Creedon seems
 5 to, to give an accounting of communications or formal
 6 notification that apparently was attached to the
 7 original of this document. And if you go down that
 8 list, you can tell me if I read something incorrectly.
 9 There is a Creedon letter to Forest dated April 6,
 10 2004; there is a Creedon letter to Forest dated April
 11 20th, 2004; a Creedon meeting with Tishman and Forest
 12 of April 21st, 2004; a Creedon e-mail to Forest dated
 13 May 7th, 2004; Creedon e-mail to Forest dated May
 14 13th, 2004; Creedon transmittal to Forest dated May
 15 24th, 2004; Creedon letter dated May 28th, 2004 to
 16 Forest; a Creedon letter dated June 17, 2004 to
 17 Forest; a Creedon letter to Forest dated June 22nd,
 18 2004; a Creedon e-mail to Forest dated July 12th,
 19 2004; a Creedon e-mail to Forest dated July 13th,
 20 2004; and a Creedon letter dated July 19th, 2004 to
 21 Forest. Did I miss anything?
 22 **A. You read everything that was on 005734 --**
 23 Q. Okay. Is there anything else --
 24 **A. -- at the bottom of the page.**

Page 209
 1 Q. Is there anything else mentioned in the letter
 2 as a communication, a formal notification,
 3 communication?
 4 **A. Would you like me to read the three pages to**
 5 **determine whether --**
 6 Q. You can certainly do that if you'd like to.
 7 **A. Well, it's up to you. Are you going to ask**
 8 **me -- if you want an answer to that question, that**
 9 **would be helpful to me.**
 10 Q. I'm sure it will take you maybe a minute to do
 11 that if you'd like to.
 12 **A. A cursory review indicates that, that there may**
 13 **have been an additional document prior to this. It**
 14 **says this letter, this is on 005733, the last sentence**
 15 **of -- let me call it the preamble, it says, "This**
 16 **letter is one last attempt to open a meaningful**
 17 **dialogue to discuss and settle a change order." And I**
 18 **don't know if there was any prior letters that were**
 19 **sent, I do know there was more than one sent.**
 20 Q. Okay, but at least on the face of the document,
 21 other than that possible reference, there is no other
 22 indication that there was any prior communication with
 23 Banc One Building Corporation regarding the order of
 24 magnitude. When I say order of magnitude, I'm talking

Creedon Controls, Inc.

v.

Banc One Building Corporation

Dennis Link

C.A. # 05-CV-300-JJF

May 31, 2006

Page 258

1 at your office?

2 **A. At Creedon's office.**

3 Q. And in essence, this is a summary of the

4 project as you saw it, correct?

5 **A. It's a summary of the project as seen from the**

6 **perspective of the people who were working on the**

7 **project at a supervisory level. And I may have**

8 **organized it, may have put it together, but it isn't**

9 **my sole product.**

10 Q. Okay. And did you write it or did someone else

11 write it?

12 **A. I did a significant amount of writing with**

13 **respect to this, but it was a, it was a joint effort.**

14 Q. Okay.

15 **A. There may have been parts of it that were**

16 **written by others. I may have changed some of those**

17 **sections, someone may have taken the sections I've**

18 **written and changed them. It was a collective effort.**

19 Q. Do you have any of the drafts that were done?

20 **A. Well, I just work directly on the computer. I**

21 **don't, you know, most times. The only time that I**

22 **would have a handwritten draft, if that's what you're**

23 **referring to, would be if I didn't have my laptop with**

24 **me. And I believe that I provided Mr. Beste all the**

Page 259

1 **documents that I had or that I could locate at the**

2 **time that he asked for production of documents.**

3 Q. Okay. And in the pages you're looking at that

4 constitute basically a summary of the job through June

5 30th, are they accurate?

6 **A. I don't think that I would have produced**

7 **something that I thought was inaccurate to Wilmington**

8 **Trust. So the answer is yes, I believe it's accurate.**

9 **Page 2 is missing, but other than that.**

10 Q. And part of it is, on page 530 you have a

11 section called "Project conduct"?

12 **A. There is a section project, "Project conduct"**

13 **on the document you gave me.**

14 Q. And does that section outline some of the major

15 obstacles that you believed occurred on this job?

16 **A. I think what it says is that there are many**

17 **areas where the low priority of this package to the**

18 **construction manager, engineer and owner became**

19 **evident. So it's talking about areas that we believe**

20 **were low priorities with the Banc One team.**

21 Q. And the second part it talks about pouring the

22 concrete decks in alphabetical order, second bullet

23 point?

24 **A. Yes.**

Page 260

1 Q. And then it says "TCC." That's a reference to

2 Tishman?

3 **A. I believe Tishman Construction Corporation, I**

4 **think is their name.**

5 Q. Okay, and Tishman was the construction manager?

6 **A. That's a good question. It really depends upon**

7 **what the relationship was. I have not had the**

8 **opportunity, as I testified earlier, to see contracts**

9 **that existed between Forest and Tishman, Tishman and**

10 **Banc One. So I'm not really sure exactly what, you**

11 **know, what status Tishman had.**

12 Q. Was it, was it your understanding while you

13 were working at the job that Tishman was the

14 construction manager?

15 **A. It was my impression working on the job that**

16 **Forest reported to Tishman and Tishman reported to**

17 **Banc One.**

18 Q. Okay.

19 **A. What the arrangement was, I don't have**

20 **impression.**

21 Q. What, what are you citing to that would require

22 the concrete decks to have been poured in alphabetical

23 order?

24 **A. They wouldn't necessarily have to be poured in**

Page 261

1 **alphabetical order, but they should have been poured**

2 **in a contiguous order. And as it turns out, the, the**

3 **drawings were pretty much A, B, C, right across the**

4 **plan. And then D, E, F and G at the top of the site**

5 **plan, with H, the administration building, being at**

6 **the bottom. So that normally there's some**

7 **consistency. They could have started in the far**

8 **corner and poured out from there and it wouldn't**

9 **necessarily be in alphabetical order. Maybe that was**

10 **a poor choice of words. But really we're talking**

11 **about in some contiguous order, so that the job flows**

12 **from point A to point B, as opposed to someone working**

13 **here and tomorrow working in a very large building at**

14 **the far corner of that building.**

15 Q. And is there anything in the specifications or

16 drawings that say the concrete was to be poured in

17 alphabetical order?

18 **A. I can't say whether it is, it is or isn't**

19 **indicated in there. But I'm telling you what industry**

20 **standard is and the way the job would normally be done**

21 **and what would normally be expected by me with, you**

22 **know, 36 years' experience.**

23 Q. Understood. My question is limited to what was

24 in this bid that said the concrete was to be poured in

Creedon Controls, Inc.
Dennis Link

v.
C.A. # 05-CV-300-JJF

Banc One Building Corporation
May 31, 2006

1 alphabetical order?

2 **A. I would have to refer to the documents.**

3 Q. And I, because of Mr. Beste, I've got to hurry
4 up. So let's try to speak the same language and get
5 through this.

6 The next page, 531, the first bullet point
7 at the top, is that the issue regarding the closing of
8 the storage trailers and the movement of materials
9 inside that you discussed earlier?

10 **A. I'm not reading the whole thing, but just the
11 first couple of sentences, and it seems to apply to
12 the movement of materials, equipment and tools inside,
13 yes.**

14 Q. And is it your belief that that was one of the
15 biggest problems or one of the -- withdraw that.

16 Is it your belief that that was one of the
17 biggest problems on the job in terms of materials
18 being in the way of people trying to get work done?

19 **A. Yes, I believe that.**

20 Q. And then you say there's another major obstacle
21 relating to the L&M corridor?

22 **A. Yes.**

23 Q. And could you tell me where that corridor was
24 located?

Page 262

Page 264

1 only could build three walls?

2 **A. Could you direct me?**

3 Q. Sure, the third bullet point.

4 **A. Yes, that was a major obstacle.**

5 Q. All right, and they had to come back and, after
6 the fourth wall was up and connect the strut to the
7 wall?

8 **A. More than once. No, actually, the strut was
9 hanging from the ceiling. What we're talking about
10 here is the conduit and wiring that would be within
11 the wall itself. If the wall is not there, they
12 obviously can't run the conduit and wire.**

13 Q. Down through the wall because it didn't exist?

14 **A. Yes, exactly right.**

15 Q. Next bullet point on the next page, it says
16 that the block walls for the generator room started to
17 go up and the construction manager instructed masons
18 where to unload their material, do you see that?

19 **A. Yes.**

20 Q. And I assume your reference to construction
21 manager, it means Tishman?

22 **A. I suspect that means Tishman, yes.**

23 Q. Okay. You came on the project in early April
24 2004?

Page 263

Page 265

1 **A. Well, without a floor plan, I can tell you that
2 it was above the battery and UPS rooms in pod A and
3 pod B, if the administration building is at the bottom
4 of the drawing.**

5 Q. Okay. And the problem with that was there was
6 a trench that ran the length of that corridor?

7 **A. Not the entire length. It was towards the
8 center and it was a couple of sections of the center
9 area. In effect, it made it impossible, very
10 difficult to use that corridor for access, which was a
11 main corridor. There was a chiller pipe that was
12 supposed to be in that trench, 16-inch chiller pipe,
13 so there were very large trenches.**

14 Q. Okay. And the, I assume the trench was shown
15 on the drawings?

16 **A. No, I don't think so. Now when you're saying
17 drawings, I guess I should say this. If we're talking
18 about someone's as-builts at some point in time, say,
19 for example, the mechanical contractor actually has to
20 record exactly where his pipe is, then it would appear
21 on his drawings. What I'm referring to is I don't
22 recall seeing it on the original drawings that I saw.**

23 Q. Okay. Your next major obstacle was the UPS
24 switch gear was too large to fit in a room and they

1 **A. End of March.**

2 Q. End of March?

3 **A. Yes.**

4 MR. BRADLEY: I guess this would be Link
5 LL.

6 MR. BESTE: Have an extra?

7 (Link Exhibit No. LL was marked for
8 identification.)

9 MR. BRADLEY: Yeah, I do, but not for you.
10 Here, you can have the actual exhibit.

11 Q. The question is whether this is, LL are your
12 notes from your first meeting with Pat Creedon,
13 Charlie Doble on March 30th, 2004?

14 **A. Yes, it does appear that these eight pages
15 represent notes on the same day that that meeting
16 occurred.**

17 Q. Okay. If you could look at page 533.

18 **A. Yes.**

19 Q. Would you agree in the first main paragraph
20 there that the general power and lighting job was 95
21 percent complete as of June 30th?

22 **A. Yes.**

23 Q. Okay, on the, you talked a little bit about the
24 conveyance, cable conveyance job, would you agree that

67 (Pages 262 to 265)

Page 290

1 Q. And you never reviewed any records relating to
2 Hatzel & Buehler's work at Bear?
3 **A. I may have.**
4 Q. As you sit here now, you don't recall doing it?
5 **A. No, I mean it's possible. But as I sit here, I**
6 **couldn't identify or describe to you something that I**
7 **reviewed.**
8 **(Link Exhibit No. PP was marked for**
9 **identification.)**
10 Q. Exhibit PP appears to be a note made by you May
11 6, 2004. At the top you have "Banc One" and there's
12 some percentages there. Do you know what they mean?
13 **A. No, I do not.**
14 Q. Do you know what the rest of this note means?
15 **A. I looked at it. It's out of context. I'd have**
16 **to go back to 5-6-04, look at what I was doing, and**
17 **then kind of put it together.**
18 Q. Okay, what would you look at to figure out what
19 you were doing on 5-6-04?
20 **A. I'd probably look at documents, days before and**
21 **days after, correspondence and things like that. In**
22 **other words, some of the things that are noted here,**
23 **remember I indicated that what we do is we sit down,**
24 **we go over some issues, then I may generate some**

Page 292

1 Could you -- I know it says 7-19-04. Is this, this is
2 your handwriting, obviously?
3 **A. Yes.**
4 Q. And it says, "Tishman," could you read that to
5 us?
6 **A. "Tishman was observed" -- oh, "moving our**
7 **material, plywood from Data Center B. Bob Allocia,**
8 **Tishman, asked that we leave the plywood on the floor.**
9 **Tishman superintendent demobilize area with no proper**
10 **document. Need a letter to Forest."**
11 Q. Okay, so the point is that Tishman told you to
12 leave the particular area?
13 **A. It looks like Tishman was removing plywood and**
14 **was observed moving our material, plywood from Data**
15 **Center B. But then Bob Allocia was saying that he**
16 **wants us to leave it there. So it seems like Tishman**
17 **is a little confused about what they want.**
18 Q. Did you eventually meet with anyone from Banc
19 One --
20 **A. Yes.**
21 Q. -- when you were attempting to resolve the
22 order -- the critical events summary and the numbers
23 assigned to that?
24 **A. Yes.**

Page 291

1 **language and then give that to people to review and**
2 **get back to me. This is the format, this is the way**
3 **that that would have occurred. So it's possible that**
4 **5-7 or 5-8 there may have been a correspondence**
5 **generated which might specifically refer to some of**
6 **these numbers.**
7 Q. Without that, you can't tell?
8 **A. That's correct.**
9 **(Link Exhibit No. QQ was marked for**
10 **identification.)**
11 Q. And look at Exhibit QQ, please. I'm interested
12 in the first page. There's an e-mail from Richard
13 Anderson to Pat Creedon. Are you aware that two
14 other, or two jobs where Creedon appeared to be losing
15 money referred to in his e-mail?
16 **A. Apparently this was sent to me, copied in the**
17 **e-mail, but unless I spend some time reading it, I**
18 **can't tell you what they're saying.**
19 Q. Are you -- let me just ask you, are you aware
20 of any other jobs that Creedon was losing money on?
21 **A. No, I don't have any awareness of that.**
22 **(Link Exhibit No. RR was marked for**
23 **identification.)**
24 Q. Let me show you what's been marked as Link RR.

Page 293

1 Q. Who did you meet with?
2 **A. Hennessey, among others. He was present with**
3 **many others at a meeting.**
4 Q. Did Banc One have a representative on the
5 project?
6 **A. Yes.**
7 Q. Do you recall who that was?
8 **A. I think it was Auwarter.**
9 **(Link Exhibit No. SS was marked for**
10 **identification.)**
11 Q. Show you SS. I think you referred to this
12 earlier too. And my question is that there's a -- you
13 had recommended someone for project management
14 assistance to Creedon. Why was that done?
15 **A. I'm sorry, where does it refer to that?**
16 Q. In the last sentence of the e-mail from you.
17 **A. Yes. Why was that?**
18 Q. Yeah.
19 **A. Because Tishman arranged for laborers to clean**
20 **the site, and in that process they threw away our**
21 **as-built drawings, the drawings that we were**
22 **maintaining during the entire course of the project.**
23 **And what we needed to do was hire somebody to take a**
24 **new set of plans and to survey the entire project and**



In the Matter Of:

Creedon Controls, Inc.

v.

Banc One Building Corporation

C.A. # 05-CV-300-JJF

Transcript of:

Paul Brainard

June 6, 2006

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B-0571

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 18	Page 20
1 you would have these conversations with foremen from 2 other trades, other than the informal conversations?	1 Q. Forest would. And was there an opportunity to 2 give feedback to Forest?
3 A. No.	3 A. Yes.
4 Q. Did anyone set up any meetings or anything 5 during those other four jobs, other foremen?	4 Q. And did you ever give any feedback to Forest in 5 response to that question, "How is it going?"
6 A. Not usually. We would have meetings amongst 7 ourselves.	6 A. Yeah, I mean it was, it was informal. It was, 7 they would ask, "How are you making out? Good or 8 bad."
8 Q. And what you just described, did that happen on 9 2357?	9 Q. And in your mind, are there any circumstances 10 that stand out where you told them that things were 11 bad?
10 A. Excuse me?	12 A. Yes.
11 Q. What you just described in terms of these 12 informal meetings that you've had on these other four 13 jobs, did the same type of thing happen on 2357?	13 Q. And let's talk about those, if we can. How 14 many times, if you can estimate or maybe if you know, 15 did you tell them that things were going badly?
14 A. Yes.	16 A. I couldn't guess that number. A lot.
15 Q. Okay. And with whom did you have informal 16 conversations about I guess coordinating work on 2357?	17 Q. A lot?
17 A. With Forest.	18 A. Yes.
18 Q. Anyone else?	19 Q. And when did you first tell someone from Forest 20 that things were going badly?
19 A. Forest would hold a meeting and other 20 contractors would be there.	21 A. I don't know the date.
21 Q. How many other contractors, if you know?	22 Q. Do you have an idea in terms of the month or 23 how far into the project?
22 A. Six or eight.	24 A. I would say once we started hanging light
23 Q. Six or eight. And are these all contractors 24 that are working on day shift the same as you?	
Page 19	Page 21
1 A. Yes.	1 fixtures and -- or the hangers for the lights, when 2 they would start to get damaged.
2 Q. Do you recall any specific names of the 3 contractors, not the -- not necessarily the individual 4 foremen, but the contractors they're working for?	3 Q. And do you have an idea as to when that was 4 when you started hanging the lights?
5 A. Yeah.	5 A. No.
6 Q. And who do you recall?	6 Q. And you say they were getting damaged. Was 7 that the reason why you reported something to Forest?
7 A. Furness, Superior, Conti, Tangent, Tishman was 8 there, American Testing. There was a mechanical 9 contractor, they were there, I don't remember, F&G 10 maybe.	8 A. There was -- you know, we had lots of things 9 getting damaged. That's, that's when I was reporting 10 it to them.
11 Q. Okay.	11 Q. And do you know or have a belief as to why 12 things were getting damaged?
12 A. I.D. Griffith. It was everybody that was on 13 the -- sometimes the painters would be there. It was 14 everybody that was on the job, for the most part.	13 A. Poor planning.
15 Q. And how often did these meetings occur?	14 Q. And what do you mean by that, when you say poor 15 planning?
16 A. Daily.	16 A. We had a, we had to try to do our job the best 17 we could without -- once they put a wall up, they 18 would leave -- they would put a room up, they would 19 leave one wall out. So we would have to leave our 20 conduits outside of the wall to connect them once they 21 finished that wall. And the pipes were getting 22 smashed and pulled apart. And that's just poor 23 planning to have to come back -- we were -- we, over 24 and over we would have to come back to finish things

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 22		Page 24
1 we've already started.		1 Forest that things were being taken?
2 Q. And do you know who was causing the damage?		2 A. No.
3 A. No.		3 Q. Did it ever end or was there ever a resolution
4 Q. Did you ever find out who was causing the		4 to the issue?
5 damage?		5 A. Not that I remember.
6 A. No.		6 Q. Anything else you recall reporting during those
7 Q. And when you say damage, I think you said		7 daily meetings, other than the damage and the
8 damage to various items. What other items are we		8 materials theft that you've talked about?
9 talking about, other than the conduit and the hangers,		9 A. No.
10 I think you also said?		10 Q. Now, you said earlier, and before I got into
11 A. Yeah, the hangers for the lights and the		11 it, about you were comparing the I think the four jobs
12 conduit, that was our bread and butter, if you will.		12 we talked about, the Creedon University of Delaware
13 You know, and we would have to go back to fix that		13 job, the FATA, the Nitro and the Conti jobs, to 2357,
14 constantly.		14 and I think you made a comment that nothing like that
15 Q. And how long did you experience that kind of		15 in regards to 2357. What were you referring to when
16 damage to your materials on the job?		16 you made that comment earlier?
17 A. As long as I can remember.		17 A. Those, those other jobs, you know, storage was
18 Q. Did it ever get resolved at all?		18 a problem on the 2357 job. You never had that problem
19 A. No.		19 on other jobs. The theft, the poor planning,
20 Q. What did anyone say in response, if anything,		20 constantly having to go back to finish jobs you've
21 to your complaints about the damage?		21 already started.
22 A. I don't remember.		22 Q. Okay, let me start off, with we've talked
23 Q. Do you recall if anything was done about the		23 about, so -- let me back up. Withdrawn.
24 damage at all by anyone other than Creedon?		24 Did you have any problems with damage of
Page 23		Page 25
1 A. I don't understand what you're asking.		1 any items or materials you worked with on the other
2 Q. Did anyone do anything to try to, I guess to		2 four jobs that you can recall?
3 rectify or to deal with the problem that you brought		3 A. Not that I remember.
4 to their attention?		4 Q. Did you have any problems with material theft
5 A. Not that I remember.		5 that you can recall on any of the other four jobs?
6 Q. Are there any other things that you recall		6 A. No.
7 reporting during these daily meetings that you thought		7 Q. And you mentioned storage issue. What's, can
8 were going badly on the job?		8 you explain to me what you mean by the storage issue?
9 A. Our material.		9 A. Well, when we first started the job, we had
10 Q. When you say your material, what are you		10 trailers and C-vans --
11 referring to in terms of --		11 Q. You're talking about 2357 now, right?
12 A. Our material to do the job.		12 A. Correct. Outside and that's where we kept our
13 Q. And is this the same issue of damage or it's		13 stuff. And then they wanted to get rid of all that
14 something different?		14 stuff to do site work, and we had to bring everything
15 A. It was getting stolen.		15 that was outside inside, or find another place
16 Q. And did you ever determine who was taking the		16 outside.
17 materials?		17 Q. And which, which one did you end up doing?
18 A. No.		18 A. Both.
19 Q. When you -- same basic question, when you		19 Q. And the other place outside, where was that?
20 reported that, did anyone respond to it or try to		20 A. Just laying in the mud, right there on the job.
21 address the issue?		21 Q. And in terms of inside, where did you put the
22 A. I reported it to Forest and they said we'll		22 materials inside?
23 take care of it, and never did.		23 A. Any floor space that wasn't occupied.
24 Q. And do you recall when you first mentioned to		24 Q. And did you have any I guess storage or lockers

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 26	Page 28
1 that Creedon had that you could use for that purpose?	1 and complete --
2 A. Minimal.	2 A. No, I'm not saying that.
3 Q. When you say minimal, why is that?	3 Q. Okay. So when have you had to go back and
4 A. Well, you have a gang box, that's where men	4 complete something that you had started?
5 keep their personal tools. And the material is spread	5 A. Very few times, very few times you have to do
6 out in a room that we had. We had to put a guy in the	6 that.
7 room to try to keep track of our material.	7 Q. And when you've had to do that on the other
8 Q. When you say put a guy in the room --	8 four jobs, what did you attribute that to?
9 A. A tool man is what they call it.	9 A. Maybe -- I don't know. Let me think. Say it
10 Q. And is there anything else this tool man did,	10 again real quick.
11 other than keep track of your material?	11 Q. When you, I think you said -- again, if I'm
12 A. Try to keep people from taking it.	12 incorrect, if I ever say something that you disagree
13 Q. Were there any other things or other I guess	13 with, let me know. I think you said that on the other
14 tasks the tool man did on a daily basis other than	14 four jobs that there have been situations where you
15 what you just described?	15 had to go back and do work that you had previously
16 A. Would hand out tools. And when we got	16 started, hadn't had a chance to complete. And so what
17 deliveries, he would put the stuff away in there.	17 I was trying to get at is what you understood to be
18 Q. And on these other four jobs, what was the	18 the reasons for having to go back and do the work.
19 storage situation on those?	19 And again we're talking about, the only universe we're
20 A. There was plenty of storage.	20 talking about is the other four jobs that we've been
21 Q. You never had any storage problems on the other	21 talking about.
22 four jobs?	22 A. Yes. Yes, I mean it's very, very few times.
23 A. No.	23 And sometimes that's, you know, because you're waiting
24 Q. Now you talked about going back and having to	24 on material or -- a rare occasion do you have to go
Page 27	Page 29
1 complete work. Is that fair to characterize that as a	1 back after you've started something to finish it.
2 sequence issue?	2 Typically we finish our job before we move on to
3 A. Meaning?	3 another one.
4 Q. In terms of doing things out of sequence or	4 Q. And what's your understanding as to why you had
5 coming back?	5 to work in some situations out of sequence on 2357?
6 A. Correct, yes.	6 A. I don't know. I wasn't the one in charge of
7 Q. And is that something in your experience that	7 that.
8 you've had on other jobs, having to come back and do	8 Q. And how often would you say that you had to go
9 work out of sequence?	9 back and complete work you had previously started on
10 A. No.	10 2357?
11 Q. So are you saying then that the other, the	11 A. A majority of the time.
12 other -- specifically I'm talking about the other four	12 Q. And were you privy to any scheduling or other
13 jobs now, the other four jobs that they, to your	13 materials for 2357?
14 understanding, proceeded in sequence?	14 A. From, from who?
15 A. Yes.	15 Q. Well, from anyone.
16 Q. And what's that understanding based on?	16 A. Well we would have meetings and they would give
17 A. When you start one job, you finish it before	17 you a schedule.
18 you move on to another one.	18 Q. And when you say that you had to go back and
19 Q. So on the other four jobs, are you saying that	19 complete things, were you informed of that during
20 you never had to go back and complete something that	20 those meetings where you had to have the conversations
21 you had previously started?	21 about the schedule?
22 A. I'm sorry, say that again.	22 A. You never -- they would start rooms and you'd
23 Q. On the other four jobs that we've been talking	23 get to a certain spot and then have to stop because
24 about, are you saying that you never had to go back	24 they still had to build the wall. So you knew you had

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 70	Page 72
1 A. Yes.	1 when it indicated the completion date was to be?
2 Q. Were you told anything as to why, after	2 A. No, I don't remember that. I just know that we
3 disagreeing with your, Mr. Sharp's request for men and	3 were past it and it wasn't done yet.
4 reaches, that two men were provided and four high	4 Q. And when you say you were past it, that
5 reaches were provided on December 3rd?	5 impression was towards the end of the job, you said?
6 A. Once different areas open up, then you need	6 A. For me.
7 more men to -- at this point a lot of the job was	7 Q. For you.
8 dirt. And once they poured the floor then we had more	8 A. Yes.
9 room to work so we needed more guys.	9 Q. And for instance, through -- I think we've
10 Q. And before December 3rd, what was your	10 already talked about through December 3rd. Through,
11 understanding or the basis of your belief that you	11 through the end of December did you feel as though you
12 could have used more men or more reaches?	12 were on schedule based upon --
13 A. You always think you need more guys.	13 A. Yes.
14 Q. Did you believe prior to December 3rd that you	14 Q. -- your review? Through January of '04 did you
15 were completing your work on schedule?	15 feel as though you were on schedule based upon your
16 A. Yes.	16 review of the scheduling document?
17 Q. Was there ever a time that you felt like you	17 A. I don't remember when I started to feel that we
18 were not completing your work on schedule?	18 were behind. I just -- the, I just remember knowing,
19 A. At the end.	19 looking at a date saying it should be done by this
20 Q. When you say "at the end," what, what months	20 point and we were past that. The whole job was past
21 are you referring to?	21 that.
22 A. The last couple months of the job when we had	22 Q. And what reasons do you attribute to being
23 to keep going back and doing things. You can -- you	23 behind schedule?
24 get a feel for a job when you're doing it and you know	24 A. I don't know that. I don't know why.
Page 71	Page 73
1 if things are going right or wrong.	1 Q. When you for yourself looking at your crew and
2 Q. And in terms of why you believed you maybe	2 the work that you still had to do, what, when you felt
3 weren't on schedule towards the end, is that solely	3 like you were behind schedule, what was it that you
4 because of the repair, going back and doing the	4 still had to do or what was left for you to do?
5 repairs and that kind of thing?	5 A. I don't remember. I don't remember.
6 A. Well they give you a schedule that you -- they	6 Q. Now, going back to your logbook, I want to go
7 give you a schedule.	7 to page 5577. It's a little ways up, about five more
8 Q. When you say "they," who are you referring to?	8 pages up from where we were. I'm looking at December
9 A. On a job, you get -- on a job you get a	9 18th, Thursday, and again, there's a notation in the
10 schedule and it shows you where you should be at each	10 margin, "Supervision plus manpower/man-hours, 120
11 point, and the whole job was not up to schedule.	11 hours." Do you have a recollection as to why you made
12 Q. And when you say "they" give you a schedule,	12 that notation on that date?
13 who was the person that you receive the schedule from?	13 A. No.
14 A. The general contractor. On every job you get a	14 Q. Moving on to page 5579, and this might be just
15 schedule. This job was no different than any other,	15 an issue of similar to -- well, not similar to what we
16 you got a schedule.	16 were talking about before with Mr. Flanagan, but it
17 Q. But I guess my question is do you know like	17 might be an issue of personnel. On January 5th of
18 what entity it was? Was it, you know, was it Tishman,	18 '04, Monday, it says, "B.H. standing around too much."
19 was it Forest, was it Creedon? Who was it that, if	19 What is that in relation to?
20 you know, who provided you with a schedule that you,	20 A. Bill Holland.
21 or provided the schedule that you saw?	21 Q. Okay, so a personnel issue.
22 A. I don't know who provided the schedule that I	22 A. I thought he was -- not my gang, I made a note
23 saw. I don't know where that came from.	23 just for myself. He didn't work for me.
24 Q. And the schedule that you saw, do you remember	24 Q. Down on Tuesday, January 6th of '04, there's a

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

<p style="text-align: right;">Page 74</p> <p>1 notation that says that something needs to be dug up 2 on January 7th, '04. Something is -- I can't really 3 make that out.</p> <p>4 A. "Two one-inch PVCs."</p> <p>5 Q. "Are broken"?</p> <p>6 A. "At N.2/26."</p> <p>7 Q. What's in reference to?</p> <p>8 A. Pipes that we put in the ground and they, I 9 didn't want to put them in the ground and they said 10 no, put them in the ground, Forest, and they got ran 11 over by trucks. And we had to repeatedly go back and 12 fix them.</p> <p>13 Q. When you say repeatedly go back and fix them, 14 how many times did you have to?</p> <p>15 A. I don't remember exactly. It was at least four 16 or five times.</p> <p>17 Q. Is this a repair issue again?</p> <p>18 A. Correct.</p> <p>19 Q. If you go to page 5580, and we're looking at -- 20 I'm looking at the bottom of the page, Friday, January 21 9th, it says, "Laborers got laid off except Ray 22 Howard." What's that in relation to?</p> <p>23 A. We had, Creedon had laborers on their payroll 24 to clean the job, the whole job. And they all got</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. And do you know when -- well, what are you 2 aware of in that regard?</p> <p>3 A. Eddie, who is another foreman, the laborers 4 threw his prints away.</p> <p>5 Q. And what makes you say that?</p> <p>6 A. He told me.</p> <p>7 Q. And do you know when this would have been?</p> <p>8 A. No.</p> <p>9 Q. And do you, when you say laborers, are you 10 talking about Creedon laborers or other laborers, if 11 you know?</p> <p>12 A. I don't know.</p> <p>13 Q. So Eddie didn't tell you which laborers he's 14 referring to?</p> <p>15 A. I heard him talking about it in the trailer and 16 that was it.</p> <p>17 Q. It says, "Trying to get an area for all of our 18 material, using battery rooms 3A and 3B right now."</p> <p>19 What's that in relation to?</p> <p>20 A. Trying to have a place to centralize all of our 21 material.</p> <p>22 Q. Is that the storage issue?</p> <p>23 A. Yes.</p> <p>24 Q. And how did battery rooms 3A and 3B work?</p>
<p style="text-align: right;">Page 75</p> <p>1 laid off except for Ray Howard.</p> <p>2 Q. And do you know why they got laid off?</p> <p>3 A. Wasn't my -- no, I don't.</p> <p>4 Q. And were there other laborers other than the 5 ones working for Creedon there on the job?</p> <p>6 A. Yes.</p> <p>7 Q. And were they also responsible for cleaning up, 8 the ones, other than Creedon, cleaning up parts of the 9 job site?</p> <p>10 A. Yes.</p> <p>11 Q. And were the other laborers who weren't Creedon 12 laborers, were they cleaning up areas where Creedon 13 was working in prior to Friday, January 9th?</p> <p>14 A. Yes.</p> <p>15 Q. And were they coordinating with the laborers 16 that Creedon had or --</p> <p>17 A. I don't --</p> <p>18 Q. Would they do things separately, if you know?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know. Are you aware of any time 21 period when any blueprints or any other items that 22 Creedon maintained were misplaced or otherwise lost, 23 stolen or anything?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. It was the best thing we had at the time.</p> <p>2 Q. Did you ever have another solution that you 3 found to be better than that one?</p> <p>4 A. Yes.</p> <p>5 Q. And what was that?</p> <p>6 A. We moved it to another room and tried to keep 7 everything inside there.</p> <p>8 Q. And I think you mentioned earlier the theft 9 issue. Was there a time period when you were able to 10 abate or otherwise kind of end the theft issue?</p> <p>11 A. I don't remember it ever stopping.</p> <p>12 Q. If you go to the next page, 5581, at the 13 bottom, Tuesday, January 13th, there's notation of a 14 "layoff today. Six out-of-towners days, one 15 out-of-towner nights." What's that in relation to?</p> <p>16 A. Guys got laid off, and I don't know why they 17 got laid off.</p> <p>18 Q. Was there any discussion at all as to -- well, 19 withdrawn.</p> <p>20 Were any of these people who were laid off 21 on your crew or working day shift with you?</p> <p>22 A. Yes.</p> <p>23 Q. And was there any discussion at all as to what 24 the day shift's needs were in terms of manpower during</p>

20 (Pages 74 to 77)

Creedon Controls, Inc.
Paul Brainard

v.
C.A. # 05-CV-300-JJF

Banc One Building Corporation
June 6, 2006

Page 78

1 that time period?
2 **A. That would have been between Rob and Charlie.**
3 Q. And we're still not up to the time period when
4 you become general foreman?
5 **A. Not yet.**
6 Q. And you'll let me know when we get there?
7 **A. I don't remember the exact date, to be honest**
8 **with you. And I thought I marked it in here. But if**
9 **I get past it, then I'm sorry.**
10 Q. All right, understood. Now I want to move on
11 to page 5583. Looking at Tuesday, January 20th, it
12 says, "Carpenters burying us in walls, area D,
13 corridor 212." What's that in relation to?
14 **A. They don't give us a chance to finish our work**
15 **in the wall, in the wall. They would put drywall on**
16 **both sides.**
17 Q. And what would you do in response to that?
18 **A. Ask them to take it down.**
19 Q. And did they take it down or was there some
20 other solution that had to be worked out?
21 **A. I think they took it down.**
22 Q. And it seems like this was a --
23 **A. Or they would, they would stop so we could**
24 **finish.**

Page 80

1 the carpenters would come and take the drywall down?
2 **A. As long as you have a good relationship, yes,**
3 **they would do that for you.**
4 Q. And did you have a good relationship with the
5 carpenters?
6 **A. Yes.**
7 Q. And still looking at 5584, it looks like the
8 same page that, that taking down drywall continues
9 through Friday, January 23rd. Is that correct?
10 **A. Um-hum.**
11 Q. All right, I want to go back to 5583. That's
12 where we first started talking about the carpenter
13 issue. And this was Tuesday, January 20th. There's a
14 note there, "Took a trip to Bear site. H&B," which I
15 assume is Hatzel & Buehler, "mounting lights on strut
16 not very nicely." What's that in relation to?
17 **A. I just thought that their work didn't look as**
18 **good as ours.**
19 Q. Fair enough. Any particular reason why you
20 thought their work was not the same as yours or not as
21 good as yours, as you say?
22 **A. Just craftsmanship I guess you could say.**
23 Q. Now, moving to the next page, 5584, and this is
24 Friday, January 23rd, there's a notation on that page,

Page 79

1 Q. It seemed like this was a problem that
2 continued for some time period. I'm looking now, and
3 I think I see a notation similar to that, "Problem
4 with carpenters," and you tell me if it's different,
5 if it's a different issue, but "Problem with
6 carpenters and drywall" also listed on Wednesday,
7 January 21st. That's the same page, 5583, is that the
8 same issue?
9 **A. Yes.**
10 Q. And then on page 5584, the next page, for
11 Thursday, January 22nd, it says, "Carpenters taking
12 drywall down in spots that were covered too quickly."
13 Is that in relation to the same issue?
14 **A. Yes, I mean once we do our work, it has to be**
15 **inspected before they can cover it. And they would --**
16 **you know, somebody from, somebody would direct them to**
17 **put the drywall up there regardless. So then they**
18 **would have to take it down to get it inspected.**
19 Q. Did you ever know of anyone from Creedon ever
20 having to, I don't want to say punch the drywall, but
21 somehow break or whatever the drywall to get to
22 materials to work on them?
23 **A. Not that I remember.**
24 Q. In your experience, if you had to get to them,

Page 81

1 "Supervision plus manpower of 136 hours." Do you have
2 a recollection as to why you made that notation on, on
3 that date?
4 **A. No.**
5 Q. On the next page, 5585, there is mention on
6 Saturday, January 24th that material is becoming an
7 issue. What's that in relation to?
8 **A. Things stolen.**
9 Q. That's a theft issue?
10 **A. Yes.**
11 Q. It also says, "Need to condense everything into
12 one area." What does that mean?
13 **A. Just to consolidate everything into, to one,**
14 **try to find one room.**
15 Q. Is that in relation to the theft issue or --
16 **A. Theft, yes.**
17 Q. That's the solution that you came up with at
18 that time?
19 **A. Yes.**
20 Q. Now I think we get to where you become general
21 foreman.
22 **A. Rob quit.**
23 Q. Right, Rob quit. This is 5586, page 5586,
24 Tuesday, January 27th. Do you have an understanding

Creedon Controls, Inc.
Paul BrainardV.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

<p style="text-align: right;">Page 82</p> <p>1 as to why Rob quit?</p> <p>2 A. I never asked him.</p> <p>3 Q. Did you have a good relationship with him?</p> <p>4 A. Yeah, I mean we were good friends, and never</p> <p>5 asked.</p> <p>6 Q. Was this at all expected or was it kind of a</p> <p>7 sudden thing or --</p> <p>8 A. When you have full employment in our local,</p> <p>9 it's not uncommon.</p> <p>10 Q. Do you know what job that Mr. Sharp went on to</p> <p>11 after this job?</p> <p>12 A. He came back there with another company.</p> <p>13 Q. Did he?</p> <p>14 A. Yes.</p> <p>15 Q. Which company did he come back with?</p> <p>16 A. Preferred.</p> <p>17 Q. And was Preferred, what type of work were they</p> <p>18 doing?</p> <p>19 A. I don't remember. A low voltage -- nothing</p> <p>20 similar to what we were. It was a different package.</p> <p>21 Q. And when he came back, do you know what time</p> <p>22 period he came back in, what the month or --</p> <p>23 A. Not -- it was not long after that.</p> <p>24 Q. And do you know if he was still acting as a</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. BRADLEY: Okay, do you know where he</p> <p>2 lives?</p> <p>3 THE WITNESS: I know where he lived a year</p> <p>4 ago. I haven't talked to him in a while. He lives in</p> <p>5 Thomas Cove in Middletown, Odessa.</p> <p>6 MR. BRADLEY: Okay, thank you.</p> <p>7 BY MR. McDONALD:</p> <p>8 Q. Next page is 5587. That's, I'm looking at</p> <p>9 Thursday, January 29th, and again it's another</p> <p>10 notation, "Supervision plus manpowers equal 80 hours."</p> <p>11 Do you have recollection as to what that notation</p> <p>12 means on that date?</p> <p>13 A. No.</p> <p>14 Q. Moving on to page 5588, there's a notation on</p> <p>15 Wednesday, February 4th for 9:30. It says, "Len Beck</p> <p>16 said order the floor boxes." And then it says</p> <p>17 underneath there, "They are going to pour</p> <p>18 administration" it looks like Tuesday, February 10th.</p> <p>19 "We have a lot of work in administration." Is that</p> <p>20 what that, that notation means?</p> <p>21 A. Yes.</p> <p>22 Q. And what's that in reference to? What's that</p> <p>23 all about?</p> <p>24 A. We had to do the underground in there before</p>
<p style="text-align: right;">Page 83</p> <p>1 general foreman for Preferred?</p> <p>2 A. He was the foreman for Preferred, yes.</p> <p>3 Q. And did you have any dealings with him while he</p> <p>4 was with Preferred?</p> <p>5 A. Yeah, I mean we're, we're cordial.</p> <p>6 Q. But did you have any professional dealings or</p> <p>7 was it just more --</p> <p>8 A. Oh --</p> <p>9 Q. Did you have to coordinate anything with him or</p> <p>10 anything like that?</p> <p>11 A. Coordinate our work with his work?</p> <p>12 Q. Right.</p> <p>13 A. No. But he would help, if I had any questions,</p> <p>14 he helped me in the transition.</p> <p>15 Q. So now we know -- so Tuesday, January 27 is</p> <p>16 when you were asked to take over and so you took over</p> <p>17 sometime around that time period?</p> <p>18 A. Correct.</p> <p>19 MR. BRADLEY: Paul, before you move on,</p> <p>20 can I ask him one question?</p> <p>21 MR. McDONALD: Sure.</p> <p>22 MR. BRADLEY: Do you know where Mr. Sharp</p> <p>23 works now or lives?</p> <p>24 THE WITNESS: Preferred.</p>	<p style="text-align: right;">Page 85</p> <p>1 they poured.</p> <p>2 Q. And was this, to your understanding, was this</p> <p>3 according to the schedule?</p> <p>4 A. I don't know. That, that was something that</p> <p>5 Charlie hashed out with those guys.</p> <p>6 Q. And were you able to get the work done that</p> <p>7 you, that you had to get done in administration before</p> <p>8 they poured?</p> <p>9 A. Yes.</p> <p>10 Q. That was what, about a week later --</p> <p>11 A. Excuse me.</p> <p>12 Q. -- that they poured?</p> <p>13 A. Six days.</p> <p>14 Q. Was there any work that you had to, I guess to</p> <p>15 put off or do in a different manner because of having</p> <p>16 to complete that work in the administration area?</p> <p>17 A. I think we hired guys to do that.</p> <p>18 Q. You hired guys?</p> <p>19 A. Yes.</p> <p>20 Q. So is it fair to say that it didn't have an</p> <p>21 impact in terms of what the other work you were also</p> <p>22 doing?</p> <p>23 A. Correct.</p> <p>24 Q. Now, if you move on to page 5590, which is</p>

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 86

1 Monday, February 2nd, a couple notations. The first
2 one I'll ask you about is the "Supervision plus
3 manpower equals 500 hours" and ask you if you recall
4 what that's in relation to?

5 **A. No, I don't.**

6 Q. And in terms of the notation next to it,
7 "Battery rooms blocked," what was that about?

8 **A. They -- there was batteries for the UPS. UPS**
9 **is a backup. And they had batteries everywhere that**
10 **were going in the battery rooms, they had them down**
11 **the corridors.**

12 Q. And who, if you have an understanding as to
13 that, who was supposed to be installing those
14 batteries?

15 **A. Furness.**

16 Q. And did you have a conversation with anyone at
17 Furness about the batteries being, I guess, I don't
18 want to use the word strewn, but kind of all over the
19 place on the floor?

20 **A. No. There was nowhere else to put them.**

21 Q. Did you have a good relationship with the
22 people at Furness?

23 **A. Me personally?**

24 Q. Yes.

Page 88

1 schedule after redirecting your focus?

2 **A. I don't know.**

3 Q. Next page is 5591. And there's another
4 notation, "Supervision plus manpower equals 270
5 hours." Do you have a recollection -- this is for
6 Tuesday, February 3rd. Do you have a recollection as
7 to what that's in reference to?

8 **A. No, I don't.**

9 Q. If you move on to page 5593, that's Thursday,
10 February 5th. A couple things, actually, maybe more
11 than a couple, there are a few notations here. The
12 first one, "Supervision plus manpower equals 265
13 hours," do you have any recollection as to what that
14 means on that day? Is that a no?

15 **A. No, I'm sorry.**

16 Q. Next thing I want to ask you about is it says,
17 "Finally able to start moving around trench." What's
18 that in relation to?

19 **A. There was a trench in the L&M corridor, which**
20 **is like the back, about two-thirds of the way back of**
21 **the building, was an open trench and it was, it was**
22 **open. So in order to get from here to here, the**
23 **trench was there, you'd have to go all the way around**
24 **and fight traffic. And they, they were trying to**

Page 87

1 **A. Yes.**

2 Q. And did they tell you anything in -- or
3 actually, maybe I should back up. Did you, did you
4 have a conversation with the people at Furness about
5 the battery issue?

6 **A. Yes.**

7 Q. And what did they -- what did you tell them and
8 then what did they tell you? That's two questions.

9 **A. "We need to get into the battery rooms," and**
10 **they said, "Yes, we know." And we have to put -- and**
11 **they said they have to put the batteries in there.**

12 **They have nowhere else to put them. They'll get them**
13 **in there as soon as they can. I said, "All right,**
14 **thanks."**

15 Q. And how did that impact your work, if at all?

16 **A. Couldn't get in there. You know, we needed to**
17 **get into those rooms to work.**

18 Q. Were you able to work in other rooms or other
19 areas while you were waiting to get into those rooms?

20 **A. We had to, you know, redirect our, our focus, I**
21 **guess.**

22 Q. And, but were you able to do that?

23 **A. Yes.**

24 Q. And do you think that you were able to stay on

Page 89

1 **get -- they were trying to cover it so you could**
2 **drive, you know, instead of -- to go from here to here**
3 **you could drive straight to it instead of having to go**
4 **around.**

5 Q. And what happened with the covering issue? Did
6 that work?

7 **A. Yes.**

8 Q. And how long did this trench I guess -- well,
9 actually, withdrawn.

10 Was it a problem for you?

11 **A. Yes.**

12 Q. And what kind of problem did it present?

13 **A. Just access.**

14 Q. And it says "Finally able to start moving
15 around the trench." How long was this problem in
16 place?

17 **A. A couple months. I don't know exactly.**

18 Q. How long did you personally have to deal with
19 it in terms of coordinating your work?

20 **A. A couple months.**

21 Q. And during that time period that you had to, I
22 guess, navigate or coordinate working around this
23 trench, what effect if any did it have on your
24 progress in terms of the schedule?

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 90

1 A. That slowed you down because you had to go a
2 round-and-about way to move.
3 Q. Were you able to make up for whatever time or
4 other issues regarding going around this trench?
5 A. No.
6 Q. So, and let me see if I can go back for a
7 second. Now, in December, and again tell me if I'm
8 incorrect, I believe you said that you felt like you
9 were on schedule?
10 A. Yes.
11 Q. Okay. End of January did you still think you
12 were on schedule?
13 A. I, I don't know. I don't remember -- I don't
14 remember not feeling like we were on schedule.
15 Q. And your feeling that -- and that feeling that
16 you had of not feeling like you were, you were not on
17 schedule, is that the right way to put it?
18 A. Yeah.
19 Q. Okay, double negative. What, if any, impact
20 did the trench issue have on that feeling?
21 A. It didn't have any. I just remember everybody
22 feeling like you had easier movement around the job
23 then.
24 Q. And so this trench issue, is it resolved for

Page 92

1 A. Because we were put -- we were doing the
2 underground on our job, and the underground down at
3 this job was done as part of the original underground
4 package.
5 Q. So you were comparing basically, is that --
6 A. Yes, just trying to see what they did before.
7 Q. How did their work measure up this time?
8 A. No, no, that was -- this was not H&B, this was
9 Battaglia did this stuff.
10 Q. All right. Now, if I go to page 5596, which is
11 Monday, February 9th, it says, "Getting answers from
12 Walt a problem. He is more worried about" -- what is
13 that, do you see that? What is that exactly? Is
14 that --
15 A. I probably didn't finish writing what I was
16 going to write.
17 Q. Okay. What were you going to write?
18 A. Who knows with -- I'm trying to remember
19 exactly. I was trying to get the layout from the Bear
20 job for the phone room, and at that same time -- you
21 know what, I don't know what I was going to write
22 there. "Getting answers from Walt a problem. He is
23 more worried about getting on" --
24 Q. Now -- I'm sorry, go ahead.

Page 91

1 you as of Thursday, February 5th?
2 A. It was resolved for everybody, yes.
3 Q. It says, "Having problem with material from,"
4 is that Graybar?
5 A. Yes.
6 Q. What's that in relation to?
7 A. Graybar is a supplier.
8 Q. And were they a supplier that Creedon worked
9 with directly or --
10 A. Yes, yes.
11 Q. And what was the problem?
12 A. I think that problem there was for some of the
13 stuff we ordered to do the underground and the
14 administration building. But we got that hashed out
15 and, you know, it wasn't a problem at the time.
16 Q. Was that just a matter of delivery, was that
17 the issue?
18 A. Correct.
19 Q. Then it also says, "Went with Charlie to look
20 at floor boxes at Bear site." That's the Hatzel &
21 Buehler job?
22 A. Yes.
23 Q. And what was the occasion? Why did you go to
24 look at the floor boxes at the Bear site?

Page 93

1 A. Walt was kind of a liaison between Forest and
2 the contractors.
3 Q. And this was -- but you do recall this being in
4 relation to the phone room I think you said something?
5 A. Yes.
6 Q. You were trying to get layouts for the phone
7 room from the Bear site?
8 A. Yes.
9 Q. Did you have a layout for the site you were
10 working on as part of the blueprints?
11 A. Yes.
12 Q. So why did you want to compare with the Bear
13 site?
14 A. They wanted to make ours the same as -- they're
15 supposed to be mirror images of each other. Theirs
16 was already poured, ours was not. I was told to make
17 ours the same as the Bear.
18 Q. Now, if you turn the next page, 5597, this is
19 Tuesday, February 10th. It's another note regarding
20 Walt. It says, "Walt Husar asked what was taking so
21 long in admin. I told him you can only have so many
22 guys in an area. Also waiting for layout of phone
23 room." What's that in relation to?
24 A. Still waiting for him to get the layout of the

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

	Page 94	Page 96
1 phone room.		
2 Q. And this is the Bear site phone layout, right?		
3 A. Yes. Again, they wanted us to mirror that, that site.		
4		
5 Q. And what's the part about "I told him you can		
6 only have so many guys in an area"?		
7 A. Oh, you have a ditch there and he -- we had		
8 guys passing materials down to guys in the ditch and		
9 he thought we should have them all in the ditch. This		
10 is a guy that's never been on a job in his life, he's		
11 always been in the office.		
12 Q. And what gives you that impression?		
13 A. He told me that.		
14 Q. He told you that?		
15 A. Yes. He, he was -- he was the guy was supposed		
16 to be getting us our answers, and he was just giving		
17 me his opinion.		
18 Q. Now, in terms of the other folks from Forest,		
19 Len Beck and I think you mentioned Paul Angerame, did		
20 you have the same impression of them or a different		
21 one?		
22 A. I think Len was a guy that worked with his		
23 tools, and he told me Paul was the same.		
24 Q. Did you ever talk to them about these issues		

	Page 95	Page 97
1 with Mr. Husar in terms of Mr. Husar not having the		
2 experience or --		
3 A. Walt was an office guy. He was what we call a		
4 bean counter. And he'll tell you that. I mean		
5 he's -- it's just one of them things.		
6 Q. And did you ever talk to Mr. Beck or		
7 Mr. Angerame about Mr. Husar's I guess being a bean		
8 counter or anything?		
9 A. He was a, one of our local brothers and I		
10 wouldn't want to bad-mouth him in front of a guy from		
11 another state.		
12 Q. All right.		
13 A. Try to have a little respect for the guy.		
14 Q. Understood.		
15 MR. McDONALD: We're going to take a break		
16 now, we have five minutes left on the tape.		
17 THE VIDEOGRAPHER: Going off the record at		
18 approximately 11:30 a.m.		
19 (A brief recess was taken.)		
20 THE VIDEOGRAPHER: Going back on the		
21 record at approximately 11:37 a.m.		
22 BY MR. McDONALD:		
23 Q. All right, Mr. Brainard, I want you to turn		
24 with me to page 5599. It's Thursday, February 12th.		

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

	Page 98	Page 100
1	1 hallway, plus move the material.	
2	Q. It also says on that page, "Big push for	1 A. Correct.
3	lighting in data centers." Why did you take note of	2 Q. And the lights getting damaged seems that that
4	that on that date?	3 continues, if you flip through here, I think there's
5	A. They wanted us to get lights up in the data	4 notations on virtually every page from Sunday,
6	center and get them turned on.	5 February 15th, through I believe the last one that I
7	Q. And was that an acceleration of the schedule	6 saw was on March 23rd, which is page -- bear with me
8	or --	7 for a second. 5635.
9	A. The way I interpret it, yes.	8 Now, why did that remain a problem for you
10	Q. And how did that impact what you were doing at	9 from -- well, again, what appears to be Sunday,
11	that time?	10 February 15th, which is page 5602, through March 23rd,
12	A. We had to hire more guys to do that.	11 page 5635, and that's the lights getting damaged?
13	Q. And the additional people you hired, did they	12 A. What did you ask?
14	work on that part of the project while the other guys	13 Q. Why did that remain a problem or why was that
15	continued to work on the other part?	14 something that you continued to note?
16	A. Correct.	15 A. Because while we were installing light
17	Q. Do you know how many additional men you hired?	16 fixtures, nobody else cares about them, they would
18	A. No. No, I don't.	17 just smash into them with a high reach or ladder,
19	Q. Now, moving on to the next page, which is 5601,	18 whatever.
20	and then also if you flip over to 5602, maybe I want	19 Q. And when you say other people --
21	to see if this is related to each other. On 5601 you	20 A. Other crafts, I'm sorry.
22	have Saturday, February 14th, "Lights missing covers	21 Q. Other crafts?
23	and end caps." Do you see that?	22 A. Yeah.
24	A. Yes.	23 Q. And do you know any of the contractors involved
		24 in any of these incidents?
	Page 99	Page 101
1	Q. What's that in relation to?	1 A. No.
2	A. That's part of the light fixture that came in.	2 Q. Did you ever report this issue to anyone?
3	Q. So did it come in missing the caps?	3 A. Yeah, I would tell Len Beck about it.
4	A. Or, or damaged, but they sent replacements.	4 Q. And what did Mr. Beck tell you in response?
5	Q. And who, from whom did you get the lights?	5 A. I don't remember what he said.
6	A. I don't remember the name off the top of my	6 Q. Okay. Now, assuming that I think March 23rd is
7	head. A supplier.	7 the last time I see it, does that mean that at some
8	Q. So did they come from a supplier damaged, is	8 point this issue was resolved? Again, that's page
9	that the gist of this?	9 5635.
10	A. They were missing the covers and the end caps.	10 A. I don't remember if that was the end of it or
11	Q. And was this supplier that Creedon dealt with,	11 whether I just stopped writing it.
12	or was it someone else who was ordering the materials?	12 Q. Okay. What would you do in response to the
13	A. I don't remember. I didn't do that.	13 lights being damaged? What was the remedy there?
14	Q. Now, on the next page, which is 5602, Sunday,	14 What did you have to do to --
15	February 15th, it says, "Lenses for lights broken and	15 A. Try to fix it, as best we could.
16	missing. Lights getting damaged." Is that the same	16 Q. So is that a repair issue?
17	issue or is it a different issue?	17 A. Yes.
18	A. The lights getting damaged were lights that	18 Q. Is that fair to say?
19	were installed getting damaged.	19 A. Yes.
20	Q. Okay, so "lights getting damaged" is a separate	20 Q. And how long would it take, for instance, if
21	issue?	21 you have a light that's damaged, about how long would
22	A. Yes.	22 it take to fix it?
23	Q. But the "lenses for lights broken and missing,"	23 A. Depends on what's wrong with it. If the lens
24	that's the same issue we just talked about?	24 got cracked, you'd take the lens down and pop a new

26 (Pages 98 to 101)

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Creedon Controls, Inc.
Paul Brainard

v.
C.A. # 05-CV-300-JJF

Banc One Building Corporation
June 6, 2006

Page 102

1 **one up. If the strut that it was -- if the hanger got**
2 **damaged, then obviously that would take longer.**
3 **You asked earlier -- I mean I have one**
4 **note in there that Eddie's log got thrown out, I just**
5 **found that.**
6 **Q. When was that?**
7 **A. March 22nd.**
8 **Q. March 22nd?**
9 **A. 5634.**
10 **Q. Thank you very much for pointing that out.**
11 Aha, I do see that.
12 **A. I don't know if that matters.**
13 **Q. Thanks. Now, going back to where we were, want**
14 **to go to page 5604. That's Tuesday, February 17th.**
15 **It says, "Poured administration." Is that the pouring**
16 **that we referred to earlier?**
17 **A. Yes.**
18 **Q. So it actually took an additional week for them**
19 **to pour administration? Is that fair to say?**
20 **A. Yes.**
21 **Q. Then going to page 5606, which is Thursday,**
22 **February 19th, again has a notation for "lights**
23 **getting damaged," which we've been talking about. But**
24 **also says "material disappearing." What's that in**

Page 104

1 addressed or how was it resolved?
2 **A. Once it's painted there's not a whole lot you**
3 **can do, and we just had to take time to go back and**
4 **find -- I mean everything had to be in pipe. There**
5 **was a lot of pipes in the ceiling, and it took a lot**
6 **of time to find them. You know, you would run one**
7 **pipe, which is called a trunk line, and then from**
8 **there you branch off. And it was very time-consuming.**
9 **Q. And how many rooms or how many, I mean I guess**
10 **areas did this effect, the painting of the ceiling**
11 **black and having to find the conduits?**
12 **A. The whole building.**
13 **Q. About how long do you think it took to locate**
14 **the conduits for the entire building?**
15 **A. I couldn't --**
16 **Q. You don't --**
17 **A. I couldn't begin to.**
18 **Q. And was it something that was raised with**
19 **anyone, the issue?**
20 **A. It was a done deal. I mean it was, our pipes**
21 **were color coded, you painted the ceiling. Okay. It**
22 **was already painted, there was nothing they could do.**
23 **Q. Now, there's also a notation there for**
24 **"Supervision plus manpower 280 hours." Is that in**

Page 103

1 relation to?
2 **A. Material disappearing.**
3 **Q. That's either for theft or some other reason**
4 **you're not aware of?**
5 **A. Yeah, I mean what other reason there is I don't**
6 **know, but yes, it could be that.**
7 **Q. And there's a notation there for "Supervision**
8 **plus man-hours of 38 hours." Do you have a**
9 **recollection of what that refers to on that date?**
10 **A. No.**
11 **Q. Going to the next page, which is actually 5607,**
12 **which is Friday, February 20th, it has some notations**
13 **that are continued from the page before, the "material**
14 **disappearing" and also "lights getting damaged," but**
15 **it also mentions "having tough time finding conduits**
16 **in ceiling." What's that in reference to?**
17 **A. We put our conduits in the ceiling, color coded**
18 **them, and then they came back and painted the whole**
19 **ceiling black.**
20 **Q. And were you told any time prior to that being,**
21 **that happening that, painting the ceiling black that**
22 **that was going to take place?**
23 **A. No, not that I remember.**
24 **Q. And what was the -- how did that issue get**

Page 105

1 relation to that?
2 **A. I don't know what that is.**
3 **Q. Now, moving on to, again we're passing a couple**
4 **of pages where there seems to be a continuous notation**
5 **of material disappearing and lights getting damaged,**
6 **that's true of 5608, it's also true of 5609 and 5610**
7 **and 5611. Come to 5612 and there's still a notation**
8 **for "material disappearing" and "lights getting**
9 **damaged" but there's also a notation for "laid off**
10 **lighting gang." What's that in relation to, that**
11 **particular reference?**
12 **A. We hired guys, a lot of guys to what we call**
13 **gang bang an area, and had them hang the lights and**
14 **they got done and got rid of them. Or laid them off,**
15 **I shouldn't say got rid of them.**
16 **Q. And any particular reason why you got rid of**
17 **them at that time?**
18 **A. Didn't need them. Their job was done.**
19 **Q. Did you ever hire back any of these guys for**
20 **other parts of the job, or was it kind of a cyclical**
21 **thing? Well, not cyclical, but --**
22 **A. It's, historically speaking that's how, you**
23 **know, as the job winds down you get rid of guys.**
24 **Q. So is it your understanding at this time around**

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 106	Page 108
1 February 26th, Thursday, February 26th, that the job 2 was starting to wind down? 3 A. No. 4 Q. So how would you characterize the progress of 5 the job as of Thursday, February 26th? 6 A. I don't remember. 7 Q. Did you still feel like you were on schedule? 8 We talked about this earlier. 9 A. No. 10 Q. You did not feel like you were on schedule? 11 A. I don't, I don't feel like -- let me see these 12 notes. 13 Q. Take your time. 14 A. I don't remember when I started to feel like we 15 were behind schedule. I don't remember exactly when 16 that was. 17 Q. So in reference to this time period, do you 18 know if it was before or after, do you have that 19 recollection at all? 20 A. No. 21 Q. Okay, excuse me. Now, turning to page 5613, 22 there is notation there, there's, some of the 23 notations are still continued, the material 24 disappearing, lights getting damaged. There is a new	1 put the diamond plate on there. 2 Q. Now, before they put the diamond plate on, on 3 Thursday March 4th, was it covered by anything? 4 A. I don't think so. 5 Q. And once it was covered by diamond plate, were 6 you able to cross over the trench? 7 A. Yes. 8 Q. Is that true of your equipment as well as just 9 men walking across it? 10 A. I think you could take a small high reach over 11 that. 12 Q. After it was covered, did it create any -- 13 withdrawn. 14 Also there is a notation there for 15 "Supervision plus man-hours, 240 hours." Do you see 16 that? 17 A. Yes. 18 Q. Do you have any recollection as to what that's 19 in reference to? 20 A. No. 21 Q. Now going to page 5623, which is Tuesday, March 22 9th, again there's a reference to "lights getting 23 damaged," we talked about that before. There's also a 24 reference to "moving of material is slowing us down."
Page 107	Page 109
1 notation, "Having problems getting cable tray 2 materials." This is Friday, February 27th. What's 3 that in relation to? 4 A. We were just starting the cable tray job and we 5 were just trying to get all our material there. 6 Q. So this is another job, this is the 26 -- or 7 2367 or 2377? 8 A. Correct. 9 Q. The things we've been talking about so far have 10 been in relation to 2357; is that correct? 11 A. Yes. 12 Q. So looking at the references, I think if we go 13 to the reference to "having problems getting cable 14 tray materials" continues through February 29th, which 15 is 5615, that's all in relation to 2377 or 2367, 16 right? 17 A. Yes. 18 Q. Now I want to go to page 5619, which is 19 Thursday, March 4th. There there's a notation, again, 20 the "material disappearing" and "lights getting 21 damaged" is mentioned again. There's another notation 22 that says, "Trench covered." What's that in relation 23 to? 24 A. The trench that was in that L&M corridor, they	1 And that reference is also continued, or something -- 2 I should say it's not continued, but there's a 3 reference on the next page, 5624, which is March 10th, 4 it says, "Other people's material slowing us down." 5 Are those two references related to each other? 6 A. We had to just keep moving stuff around, 7 lights, wire, and other companies had the same 8 problems. They had stuff -- a problem finding a good 9 place to put your stuff where it was out of the way. 10 Q. And noting it here on March 9th and March 10th, 11 was it a problem prior to that at all, or it was 12 particularly notable on this particular occasion? 13 A. Yeah, I guess it just stood out more than the 14 other days. It was a problem the whole time having a 15 place for the material. 16 Q. Do you recall why it stood out more on those 17 particular days? 18 A. No, no, I don't. 19 Q. And on March, the March 10th notation for 5624, 20 there is a notation for "Supervision plus manpower 21 equals 24 hours." Do you have a recollection as to 22 what that's in reference to? 23 A. No. 24 Q. Moving ahead to 5628, which is March 15th, it's

Creedon Controls, Inc.
Paul Brainardv.
C.A. # 05-CV-300-JJFBanc One Building Corporation
June 6, 2006

Page 122

1 Q. Is that correct?
 2 A. Yes.
 3 Q. And you don't recall what that's about?
 4 A. I don't remember exactly, no.
 5 Q. All right.
 6 A. It's hard to believe this was two years ago.
 7 Q. Understood. And then there's blanks for April
 8 26th through April 28th. Do you know why that is?
 9 A. No, I don't.
 10 Q. Now were you working on the project at that
 11 time?
 12 A. Yes, best I remember.
 13 Q. Who came in as general foreman after you left?
 14 A. I don't know if it was John Mulrooney or Fred
 15 Street. I don't know.
 16 Q. Do you know where John Mulrooney currently
 17 works?
 18 A. No.
 19 Q. Does he live in Wilmington or --
 20 A. He lives down at the -- he lives in Millsboro.
 21 Q. Is he retired?
 22 A. No, no. Oh, no, he lives at the beach.
 23 Q. Okay.
 24 A. He commutes.

Page 124

1 Q. Okay, so as you discovered damaged material,
 2 you would submit a change order to Creedon -- or I'm
 3 sorry, to Forest, to have that repair work performed?
 4 A. I would tell Charlie and he would submit the
 5 change order paperwork.
 6 Q. And then you, you're aware that that happened
 7 or because Creedon then performed the work to repair
 8 the damaged goods?
 9 A. Yes.
 10 Q. Are you aware of any work that was done on a
 11 time-and-material basis?
 12 A. Not that I remember.
 13 Q. You talked about the trench that was in the --
 14 was it in the data center or --
 15 A. It was between the data -- the data centers
 16 were on each end, there was battery rooms in the
 17 middle with gear. Then there was the corridor, then
 18 behind that was the generators and the mechanical
 19 rooms. The trench was -- that was the L&M corridor
 20 which separated the mechanical from the data, that's
 21 where it was.
 22 Q. And do you know what went into that trench?
 23 A. Mechanical piping.
 24 Q. And was that trench shown on the drawings, or

Page 123

1 Q. All right. So he lived at the beach at that
 2 time and would commute up here to this job?
 3 A. Yes.
 4 Q. Do you have any -- or are you aware of any
 5 letters or writings directed to Forest about stolen
 6 material relating to Creedon?
 7 A. Not that I am aware of, no.
 8 Q. Are you aware of any written, or writings to
 9 Forest about damaged material?
 10 A. Not that I know of.
 11 Q. Are you aware of any writings to Forest about
 12 work being performed out of sequence?
 13 A. Not that I know of.
 14 Q. Are you aware of whether Creedon submitted
 15 change orders for stolen material during the course of
 16 the job?
 17 A. I don't know.
 18 Q. Are you aware of any change orders submitted by
 19 Creedon during the course of the job, you know, when
 20 the event occurred for material that you say was
 21 damaged?
 22 A. For repair?
 23 Q. Correct.
 24 A. Yes, yes.

Page 125

1 you're not aware?
 2 A. Not that I remember.
 3 Q. Did you review the mechanical drawings?
 4 A. When I first got on the job, that was the
 5 general foreman did that, that was Rob.
 6 Q. At any later point did you review the
 7 mechanical drawings?
 8 A. For hanging our lighting in different places we
 9 would have to do that.
 10 Q. And did you review them to determine if the
 11 trench was present?
 12 A. Well, the trench was already there at that
 13 point when I took over.
 14 Q. Do you have any reason to believe this trench
 15 was not shown on the drawings?
 16 A. I really don't know.
 17 MR. BESTE: Objection, speculation.
 18 Q. Were there at any time boards or other
 19 materials over parts of the trench so men could walk
 20 over the trench?
 21 A. I don't remember.
 22 Q. And were you -- even though it might be
 23 difficult, was Creedon able to navigate around the
 24 trench to get to different areas?